No. 22348

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL D. SULLIVAN,
JO ANN SULLIVAN,

Appellants,

vs.

E. W. MULLINS, JOHN K. SLOAN,
and RICHARD L. OLIVER, dba
MULLINS, SLOANE & OLIVER CO.,

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REPLY BRIEF OF APPELLANTS

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Corona, California 91720

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ARGUMENT

I

THE APPELLANTS ARE AGGRIEVED PARTIES

The Appellees argue that because Appellants submitted Findings of Fact and Conclusions of Law to conform with the decision of the Referee in Bankruptcy, therefore, they are not "aggrieved" and should not be heard on appeal.

The case law disagrees with appellees' contentions:

Grant v. Board of Medical Examiners (1965), 232 Cal. App. 2d 820 at 827:

> "Generally speaking a party not aggrieved is a party not beneficially interested."

Grief v. Dullea (1944), 66 Cal. App. 2d 986:

> "Parties having no interest in an action are not aggrieved parties, and hence may not appeal."
>
> "The right to appeal should be recognized unless the statute provides otherwise, and it should not be denied upon technical grounds if the appellant is acting in good faith."

Buffington v. Ohmert (7 August 1967), 253 ACA 300:

> "A 'party aggrieved' is one who has an interest recognized by law in the subject matter of the judgment and whose interest is injuriously affected by the judgment." (Danielson v. Stokes, 214 Cal. App. 2d 234, 237.)

II

THERE IS NO RIGHT OF REENTRY UNTIL A PROPER THREE DAY NOTICE IS SERVED.

The Appellees make much of the point that the lease provides that reentry shall not terminate the lease, and also the provisions of the lease give the lessors multiple rights and remedies to be exercised at any time.

The entire question was discussed by Los Angeles County Superior Court Commissioner, JOHN LESLIE GODDARD, in an article appearing in the Los Angeles Daily Journal on 18 January 1968.

Commissioner Goddard points out that the law on reentry cannot be fixed by the provisions of a lease, and that the landlords do not have a right of forcible reentry, and without proper notices lease provisions are not sufficient.

The leading case and last case on the subject which was discussed by Commissioner Goddard is Jordan v. Talbot (1961), 55 Cal. App. 2d 597, where the California Supreme Court held:

> "It is settled that no immediate right to possession can be obtained under a right of reentry until a proper three day notice has been served on the leassee or grantee."

"Even if the lease had authorized a forcible entry it would be invalid as violating the policy of the forcible entry and detainer statutes."

It is clear then, when the appellees, as lessors, changed the locks and took forcible possession, the lease was terminated; as their action was without the service of a three day notice or any other notice.

Commissioner Goddard points out that the amendments in 1967, to California Civil Code §1860 and 1861a, does not reverse the Jordan V. Talbot case; and in fact if upheld, applies only to apartment houses, cottages, or bungalow courts.

CONCLUSION

The day the appellees, as lessors, took possession, without giving any notices; their claim was for $253.09; therefore, the Referee in Bankruptcy was without authority to adjudicate appellants as bankrupts.

Respectfully submitted,
COURTNEY & COURTNEY
By: /s/ Norman P. Courtney
Attorneys for Appellants

CERTIFICATE

I certify, that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that in my opinion the foregoing brief is in full compliance with those rules.

/s/ Norman P. Courtney

NORMAN P. COURTNEY